Court No.2

In the High Court of Uttaranchal at Nainital.

Appeal Against Order No. 141 of 2003.

The New India Assurance Company Ltd.,
Through its Divisional Manager,
Divisional Office, Nainital Road,
Opposite Judges Court, Haldwani,
District- Nainital, ... Appellant

Versus

1. Madan Mohan S/o Sri Budhi,
2. Km. Kritika D/o Sri Madan Mohan,
3. Km. Akansha D/o Sri Madan Mohan,
   All residents of Upper Bazar, Patwari Circle Karnprayag, Tehsil Karnprayag, District-Chamoli.
4. Sri Rajendra Singh S/o Sate Singh,
   R/o Village Wavai, Patwari Circle-Wavai,
   Tehsil and District-Rudraprayag.
5- Sri Jagmohan Kanwasi
   S/o Sri Shishu Pal Kanwasi,
   R/o Village and Patwari Circle Gocher,
   Tehsil Karnprayag, District Chamoli.

..... Respondents

For appellant- Sri Tanveer Alam Khan Advocate,
For the respondent/claimants-Sri R.P. Nautiyal Advocate.

Dated: 23rd Aug., 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant Insurance Company against the judgment and order dated 09.04.2003 passed by the Motor Accident Claims Tribunal, Chamoli, ***(hereinafter referred to as the Tribunal)*** *in Motor Accident Claim Petition No. 79 of 2000, whereby the claim petition of the claimants has been allowed for grant of compensation amounting to Rs. 4,03,000/- against the Insurance Company.*

2- Brief facts giving rise to this appeal are that deceased Smt. Sunita Singh was traveling in vehicle No. UP 07-C-4543 to go to Dehradun from Karnprayag. The said vehicle was being driven by its driver Jagmohan Singh Kanwasi rashly and negligently due to which at 9-10 a.m. near Panchpulia at Karnprayag said vehicle fell into river and Sunita Singh flown in the river and even her deadbody could not be traced. The deceased was employed as Assistant Teacher and her monthly salary was Rs. 5,189.00. She was aged 35 years at the time of accident. The husband of deceased and her two minor daughters filed the claim petition for compensation on account of death of Sunita Singh which was allowed by the Tribunal accordingly.

3. The Opposite Parties contested the claim petition by filing their separate written statements. The opposite party No.1-Insurance Company pleaded that the vehicle was not being plied in accordance with the terms and conditions of the insurance policy at the time of accident. The opposite party Nos. 2 & 3 owner of the vehicle and driver respectively denied the plea taken by the Insurance Company and stated that the accident was caused due to sudden lock of steering.

4- The learned counsel for the Insurance Company submitted that the driver of the offending vehicle was not having a valid driving license at the time of accident and the learned Tribunal erred in holding the liability to the compensation on the Insurance Company. We have gone through the impugned judgment and find that the Tribunal has framed issue on the said point that ***"whether the driver of the vehicle was having valid driving licence,***

registration, fitness and permit at the time of accident? If no, its effect?" and held that it is very much clear from the papers filed by the Opp. Party No.2 per list 20-Ga to 26-Ga that the vehicle was insured with the Insurance Company and the driver was having valid driving license as also the registration of the vehicle and fitness etc. are upto date on the date of accident. We hold that the findings given on this issue are correct and do not require any interference.

5. The learned counsel for the appellant further confined his prayer that the amount of compensation awarded is excessive and it may be reduced. The learned Tribunal while deciding issue No.4 gave its finding that the deceased was in Government job and her monthly salary was Rs. 5,190/-. In this regard certificate of income has been filed before the Tribunal, which is paper No. 18-Ga on the record. This document has never been rebutted by the Opp. Parties. Hence it can safely be said that the amount of compensation has been calculated on the correct income of the deceased, which she was drawing monthly. This ground raised by the learned counsel for the appellant also has no force. Further, the law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. The Apex Court in case of **National Insurance Company Ltd. Chandigarh versus Nicolletta Rohtagi and others reported in (2002) 7 Supreme Court Cases, Page 456** has held that,"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as

findings as regard negligence or contributory negligence of the offending vehicle". However, nothing has been shown to us on behalf of the appellant- Insurance Company so as to warrant any inteference with the findings arrived at by the learned Tribunal in the case under appeal.

6. Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant-Insurance Company has no force.

7. The appeal has no merit and is dismissed. The order impugned in this appeal dated 09.04.2003 is affirmed. There shall be no order as to costs. The amount deposited by the appellant in the appeal shall be remitted to the Motor Accident Claims Tribunal concerned within a period of two months from today.

(B.S. Verma,J.) **(P.C. Verma,J.)**

P.Singh